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Supreme Court of the United States

OCTOBER TERM, 1944

No. 691

RAILWAY MAIL ASSOCIATION,
Appellant,

v.

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, *et al.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK

Motion for Leave to File Brief as *Amicus Curiae* and Brief in Support Thereof

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Motion for Leave to File Brief as *Amicus Curiae*

May it Please the Court:

The undersigned, as counsel for the American Civil Liberties Union, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *Amicus Curiae*. The consent of the attorney for the appellee only to the filing of this brief has been obtained.

Special reasons in support of this motion are set out in the accompanying brief.

March 3, 1945.

ARTHUR GARFIELD HAYS
Counsel for American Civil Liberties Union, *Amicus Curiae*

Supreme Court of the United States

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APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

This is an appeal by the Railway Mail Association from a judgment of the Supreme Court of the State of New York entered upon the remittitur and final decision of the Court of Appeals of the State of New York dated July 19, 1944 (293 N. Y. 315). The appellant Railway Mail Association (herein called "plaintiff") presents nine assignments of error (R. 45-46). In brief, the plaintiff objects to the decision of the Court of Appeals in applying to it §43 of the Civil Rights Law of the State of New York, forbidding racial discrimination by a labor organi-

zation, and in upholding the constitutionality of said act as so applied. As the question of interpretation of the act is not here open to review, the sole question is the constitutionality of the act as interpreted by the Court of Appeals.

The plaintiff challenged the validity of the act on two grounds, one being that as interpreted it constitutes arbitrary classification and the other being that it is in conflict with the exercise of federal power.

The plaintiff is a foreign corporation organized under the laws of the State of New Hampshire, having thirteen branch associations located in the State of New York. Its membership is confined to "any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service who is of the Caucasian race or a native American Indian." These clerks are civil service employees of the United States employed through the exercise of the constitutional power of Congress "to establish Post offices and post Roads:"

§43 of the Civil Rights Law provides, in part, that "No labor organization shall hereafter, directly or indirectly, * * * deny a person or persons membership in its organization by reason of his race, color or creed * * *."

The plaintiff brought an action in the State Court for a declaratory judgment that this law did not apply to it and that, if applied to it, was beyond the constitutional power of the State Legislature. The Appellate Division of the Supreme Court of the State of New York (267 App. Div. 470) and, on appeal, the Court of Appeals of the State of New York (293 N. Y. 315), both unanimously held that the act was applicable to the plaintiff and, as interpreted, was a valid enactment of the state.

Interest of the American Civil Liberties Union

The *amicus curiae* herein is a national organization, many of whose members are residents and citizens of the State of New York. The object of the American Civil Liberties Union, as set forth in its charter, is the preservation and defense of civil rights. The Civil Liberties Union has consistently adopted the view that distinctions in civil rights based on race or nationality are "by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." It has, therefore, advocated and supported any reasonable law forbidding discrimination in civil rights by reason of race, creed, color or national origin.

POINT I

Section 43 of the Civil Rights Law is not in conflict with any federal power.

1. The federal government has specifically limited itself in respect to the regulation of unions which may be joined by government employees.

The Act of August 24, 1912, Chap. 389 (37 Stat. 555; 5 U.S.C.A. §652), after prescribing the procedure by which civil service employees, such as postal service employees, may be removed, limits the right of removal on account of the union status, as follows:

> "Membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike,

against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said Postal Service, or the presenting by any such person or groups or [of] persons of any grievance or grievances to the Congress or any member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service. The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or member thereof, shall not be denied or interfered with."

The plaintiff, in apparent recognition of this Act of Congress, limits its corporate purposes and activities so as to include the presentation of grievances without resort to strikes and collective bargaining.

The National Labor Relations Act (29 U.S.C.A., §152(2)) by its terms expressly excludes the United States or any state, as an employer.

The War Labor Disputes Act (50 U.S.C.A. App., §§1501-1511) adopts the same exclusion of government employees.

It appears, therefore, that the federal government in enacting laws relative to organized labor, either in time of war or peace, has excluded government employees except in so far as it has forbidden the removal of civil service employees for associating with other members of their group in the presentation of grievances. It would be difficult to point out any situation where, by implication, at

least, the police power of the states in respect to such a subject was more definitely reserved to the states. Congress has deliberately refrained from occupying this field.

2. On the particular subject of racial discrimination the federal government has declared a definite public policy as a war-time policy. By Executive Order 8802, issued June 25, 1941, there was established a Committee on Fair Employment Practice to eliminate discrimination in government departments and defense industries, and by Executive Order 9346, issued May 27, 1943, an amended order was issued defining the powers and duties of said Committee. This last order contains the following:

> "Now, Therefore, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States and Commander in Chief of the Army and Navy, I do hereby reaffirm the policy of the United States that there shall be no discrimination in the employment of any person in war industries or in Government by reason of race, creed, color, or national origin, and I do hereby declare that it is the duty of all employers, including the several Federal departments and agencies, and all labor organizations, in furtherance of this policy and of this Order, to eliminate discrimination in regard to hire, tenure, terms or conditions of employment, or union membership because of race, creed, color, or national origin."

This order also directs that all contracting and subcontracting agencies of the government of the United States shall include in their contracts and subcontracts a provision obligating the contractor not to discriminate against any employee on account of race or color and a further provision requiring all departments and agencies

of the United States engaged in vocational and training programs for war production not to engage in such discrimination. The Fair Employment Practice Committee is functioning and seeking to enforce this policy of nondiscrimination.

In the Matter of St. Louis Shipbuilding and Steel Company, No. 62, Jan. 10, 1945 (10 Daily Labor Rep., sec. D, 1/15/45).

Moreover, the recent decision of this Court in the case of *Steele* v. *L. & N. R. R. Company,* 323 U. S. , Dec. 18, 1944, also makes it clear that the Railway Labor Act (44 Stat. 577, as amended; 45 U.S.C.A. §151) and the National Labor Relations Act (*supra*) create rights and duties which must be exercised "without hostile discrimination." In that case this Court said:

> "Here the discriminations based on race alone are obviously irrelevant and invidious. Congress plainly did not undertake to authorize the bargaining representative to make such discrimination."

3. The remoteness of the state law in its effect on the operation of mail service also deserves special consideration.

This state law does not impose any restriction on the power of the federal government to conduct the postal service or to employ people for that purpose. It applies only to self-governing associations of employees which are free to conduct their own affairs within the limits of law. Under the constitution of the plaintiff, aliens but not negroes are eligible to membership (R. 2), but the federal government is free to do the opposite—to discriminate against aliens and to employ negroes. This prohibition of

the Civil Rights Law imposed on labor organizations does not directly affect the operations of the railway mail service (*Adair* v. *U. S.*, 208 U. S. 161), notwithstanding the fact that the connection is close enough so that Congress could, if it so desired, enact legislation which would supersede the application of the state act.

The operations of the mails are no more affected by this law than they would be by a state law which required unions to file annual accountings or to elect officers only by secret ballot. No one would contend that a requirement by the State of New York that such corporate organizations as the plaintiff be domiciled in that state (R. 3, 19, 23) would be invalid in the absence of federal legislation, but such a requirement would be far more drastic than one requiring such organizations not to engage in racial discrimination. While it must be conceded that a law of the State of New York forbidding the employment of anyone under eighteen years of age could not be applied to the federal government in employing mail clerks in that state, it does not follow that a state law which undertook to forbid a union from accepting persons under eighteen years of age as members would be invalid in the absence of conflicting federal legislation.

Recent decisions of this Court further show its reluctance to limit state powers on the ground of conflict with federal powers where it is possible to reach the conclusion that the two laws can exist side by side.

In the case of *Allen Bradley Local, et al.* v. *Wisconsin Employment Relations Board, et al.*, 315 U. S. 740, this Court considered the question as to whether a cease and desist order, issued pursuant to the terms of the state statute against mass picketing and threats of injury to employees and picketing of employees' homes, was in con-

flict with the National Labor Relations Act. The Court repeated the statement that it has long insisted that "an intention of Congress to exclude states from exerting their police power must be clearly manifested". (p. 749) It held in the particular case that "Congress has not made such employee and union conduct as is involved in this case subject to regulation by the federal Board" (p. 749) and that "here, as we have seen, Congress designedly left open an area for state control". (p. 750) This Court added:

> "Since the state system of regulation as construed and applied here can be reconciled with the federal Act and since the two as focussed in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long obtained in this Court." (p. 751)

In the case of *Terminal Railroad Association of St. Louis* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1, the Railroad Association afforded terminal services and facilities for the sorting and switching of cars, nearly all of which moved in interstate commerce. The Brotherhood of Railroad Trainmen complained to the Illinois Commerce Commission over the failure of the railroad to provide cabooses for purposes of health, comfort and protection. The Commission, after appropriate proceedings, entered an order requiring the cabooses, and the railroad contested its validity on the ground that it was in conflict with federal powers.

In answer to the claim that Congress had occupied this field by various acts, the Court said (p. 4):

> "Appellant claims that there had been Congressional occupation of the field by virtue of the

> Boiler Inspection Act, the Safety Appliance Act, and the Interstate Commerce Act. It is not contended, nor do we understand, that these statutes, by themselves and uninplemented by any action of the Interstate Commerce Commission, lay down any requirement that cabooses shall or shall not be used on any of the runs in question. Nor is it contended that the Interstate Commerce Commission itself has sought to make any such requirement. At least in the absence of such action these acts do not themselves preclude the state order * * *."

It was further contended in that case that the order of the State Commission was in conflict with the Railway Labor Act, which provided for the settlement of disputes between carriers and employees, including "disputes involving train and yard-service employees of carriers." The Court assumed, without deciding, that the demand for caboose service and its refusal might constitute a dispute to be settled pursuant to the terms of the Railway Labor Act, and said (pp. 6-7):

> "The question is whether the Railway Labor Act, so interpreted, occupied the field to the exclusion of the state action under review. We conclude that it does not, and for the following reasons:
>
> "The Railway Labor Act, like the National Labor Relations Act, does not undertake governmental regulation of wages, hours or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those Acts is not primarily in the working conditions as such * * *. The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce. * * *

"* * * But we would hardly be expected to hold that the price of the federal effort to protect the peace and continuity of commerce has been to strike down state sanitary codes, health regulations, factory inspections, and safety provisions for industry and transportation. * * * We hold that the enactment by Congress of the Railway Labor Act was not a pre-emption of the field of regulating working conditions themselves and did not preclude the State of Illinois from making the order in question."

In the case of *Cloverleaf Butter Co.* v. *Patterson, et al.*, 315 U. S. 148, this Court had before it the question of the validity of state action in respect to the inspection and seizure of packing stock butter required for the manufacture of renovated butter for interstate commerce, and held that the state regulation was inconsistent with the federal regulations. The Court said that the test to be applied "is the effect of that action upon the national regulatory policy declared by the federal statute * * *". (p. 153) "It must be clear that the federal provisions are inconsistent with those of the state to justify the thwarting of state legislation". (p. 156) The Court proceeded to illustrate its doctrine by reviewing the cases of *McDermott* v. *Wisconsin*, 228 U. S. 115, and *Savage* v. *Jones*, 225 U. S. 501, and thus pointed out that a state and federal law, each dealing with the protection of the public from fraud and adulteration in the sale of food, can exist side by side provided that the state law is only supplementary to, and not in conflict with, the federal law.

See, also:

Maurer v. *Hamilton*, 309 U. S. 598.

From what has already been set forth, we think it is clear that there is no substance to the contention that employees in the postal mail service are exempt from the police power of the state merely because they are employed in a service which Congress has the exclusive power to carry on.

§43 does not purport to regulate or control the conduct of railway mail employees as employees but only a policy of certain associations which they may or may not elect to join.

An analogous decision illustrating the direct and indirect effect of state legislation on a federal function, is found in the case of *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania*, 318 U. S. 261, where the state statute regulating the sale of milk was applied to milk purchased by agencies of the United States Government. The Court pointed out that a regulation of this kind which merely imposed added economic burdens on the government but imposed no direct regulation on it, was valid, and said:

> "* * * We may assume that Congress, in aid of its granted power to raise and support armies, Article 1, §8, cl. 12, and with the support of the supremacy clause, Article 6, §2, could declare state regulations like the present inapplicable to sales to the government. * * * But there is no clause of the Constitution which purports, unaided by Congressional enactment, to prohibit such regulations, and the question with which we are now concerned is whether such a prohibition is to be implied from the relationship of the two governments established by the Constitution.
>
> "We may assume also that, in the absence of congressional consent, there is an implied constitu-

> tional immunity of the national government from state taxation and from state regulation of the performance, by federal officers and agencies, of governmental functions." (p. 269)

See, also:

> *Martin* v. *Pittsburgh & L. E. R. R. Co.*, 203 U. S. 284.

The plaintiff's contention on this specific point seems to be reduced to the claim that since Congress has in effect suffered postal employees to associate for the presentation of grievances, the state is barred from passing any law applicable to unions to which associations of postal employees may belong, even though that law in no way conflicts with the permission given to postal employees to unite in the presentation of grievances. It seems clear under the authorities already discussed, and the arguments already presented, that the law is otherwise.

We submit further that the underlying principles which determine questions of conflict between the federal and state governments, as set forth in the cases cited herein, apply with equal force whether we deal with interstate commerce conducted by private parties or service rendered under the power "to establish post offices."

To repeat,—the act regulates the conduct of associations within the State of New York and does not in any way regulate, as such, the conduct of employees of the postal service. As said in the closing paragraph of the opinion of the Appellate Division of the State of New York (R. 32):

> "• • • We see here no attempt on the part of the state to infringe upon the federal power to

conduct the postal system or handle the mails. The racial discrimination forbidden by this statute is too far removed from the operations of the federal government even though membership in the plaintiff is limited to railway postal clerks and substitutes. There is no effort on the part of the state to regulate or interfere with the railway mail service. Quite the contrary. It is an effort to prevent racial and religious discrimination in all labor organizations operating within the state."

POINT II

Section 43 of the Civil Rights Law is not in conflict with the Fourteenth Amendment of the Federal Constitution.

The opinion of the Court of Appeals states that "plaintiff does not challenge the validity of a statute which would prohibit such discrimination by 'labor organizations' to which the provisions of article 20 of the Labor Law apply", but does challenge the validity of the act on the ground that, when considered in connection with article 20 of the Labor Law, its application to the plaintiff creates "arbitrary, capricious and unreasonable classifications * * *": (R. 38)

On the question of the validity of this act as against the charge of arbitrary and unreasonable classification, this petitioner is not desirous of being heard, because it seems clear that such question is without merit.*

The question of the inherent power of a state to forbid discrimination by labor organizations is, we submit, not before this Court because it was not raised in the court below.

* See Columbia Law Review, Jan. 1945, Vol. 45, No. 1, pp. 86-90.

McGoldrick v. *Compagnie Generale Transatlantique*, 309 U. S. 430;
State Farm Mutual Automobile Insurance Company v. *Duell*, 323 U. S. , No. 115, October term, 1944.

But in view of the fact that the plaintiff largely abandons its contention of arbitrary classification and devotes itself primarily in Point I of its brief to discussing the inherent power of the state to deal in general with such a subject, we are including that point in this brief. Under this point the plaintiff's main contention seems to be, in substance, that the Railway Mail Association is a social organization and not an economic one comparable to a trade union and that the power of the Legislature to regulate labor unions in respect to discrimination does not extend to such a social organization.

Petitioner submits that the facts do not support such a contention and that the entire record shows that the organization is predominantly economic. The opinion of the Court of Appeals finds:

> "The purpose of 'mutual aid or protection' and in proper case of discussing grievances with their employer and presenting demands or suggestions of their members *as a class* is included by plain implication in the purposes set forth in the charter. Indeed, among the duties of the industrial secretary of the organization, prescribed in its constitution, is the duty to 'assist in the presentation of grievances pertaining to service conditions and endeavor to secure adjustment of such through administrative action.' " (R. 35)

In fact, two pages of the Court of Appeals opinion (R. 35-6) proves beyond question that plaintiff is an economic

organization identical in many particulars with the usual type of labor organization. Nor is this fact changed by the provision in the constitution of the plaintiff providing for the promotion of closer social relations, for, as is well known, most labor unions include provisions and activities which are purely social in character. If plaintiff wishes the status of a fraternal organization, it should shun the functions of a labor organization. In dealing with this point, on page 30 of its brief the plaintiff is in effect attempting to reargue the unreviewable conclusion of the state court that it is a labor organization.

The very fact that the plaintiff seems driven to claim that its organization is a social one seems to be an implied recognition of the power of the State Legislature to regulate racial discrimination by labor organizations, but even though there were no such implied recognition, we submit that the authorities make it clear that such power does exist and its proper exercise does not constitute a violation of the Fourteenth Amendment.

§43 implements the general public policy of the State of New York in providing for equality of treatment of rights fundamental and inherent to all citizens. Persons may not be excluded from restaurants, hotels or other places of public accommodations on the basis of race, creed or color and other statutes extend similar protection in other fields.* These laws have all been enacted under

* N. Y. Constitution, Article 1, Section 11.
Alcoholic Beverage Control Law, Section 65.
Civil Rights Law, Sections 13, 40-45.
Civil Service Law, Section 14-c.
Education Law, Section 36.
Insurance Law, Section 209.
Judiciary Law, Section 467.
Labor Law, Section 220-e.
Penal Law, Sections 514, 515, 700, 701, 1191.
Public Housing Law, Section 223.
Public Service Law, Section 79.
Tax Law, Section 4.

the police power of the state to protect the public health, morals, welfare and safety of its citizens and residents.

In the Civil Rights Cases (109 U. S. 3) the Supreme Court stated that State Civil Rights Laws were appropriate to secure negro equality, and in striking down Congressional legislation which forbade discrimination against negroes in places of public entertainment and transportation such as inns and railroads, the Court said (at p. 17) that the rights of persons aggrieved "may presumably be vindicated by resort to the laws of the State for redress". (See Fraenkel, 150 Years of the Bill of Rights, 23 Minnesota Law Review 719, 733). There can be no doubt, therefore, that legislation protecting a basic civil right, if reasonable and directed to the elimination of the particular evil infringing that right, is a valid exercise of the state's police powers. The Equal Rights Statutes existing in 22 states have all been passed on the theory that freedom from racial or religious discrimination is a fundamental civil right. (*Hirabayashi* v. *U. S.*, 320 U. S. 81).

In the case of *New Negro Alliance* v. *Grocery Company*, 303 U. S. 552, where the Court interprets the Norris-LaGuardia law, it was clearly stated that the right to protect workers against discrimination, on account of race or color, was fully as important as the right to protect them against discrimination on account of union affiliation and, of course, this Court is fully familiar with the fact that both state and federal governments acting within their respective jurisdictions have the right under the police power to protect union members from such latter discrimination. In this connection in the *New Negro Alliance* case this Court (p. 561) says:

> "The desire for fair and equitable conditions of employment on the part of persons of any race, color, or persuasion, and the removal of discriminations against them by reason of their race or religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or craft unions or any form of labor organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation."

The Supreme Court in many cases has already held that the right to work and to engage in a profession is a civil right. In *Truax* v. *Raich*, 239 U. S. 33, in outlawing a state statute which placed restrictions on the right of aliens to be employed within the state, the court said, at page 41:

> "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the (14th) Amendment to secure * * * if this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words."

The trade union today in many fields controls the major source of the supply of labor.*

Whether a particular union exercises such a control today is immaterial, as society may find it in that position

* See Witmer, Civil Liberties and the Trade Unions, 50 Yale Law Journal 621, 624. Cf. Chafee, The Internal Affairs of Associations, 43 Harvard Law Rev. 996.

tomorrow. With current developments in the labor field, the importance of union membership in its relation to the fundamental right to work has become increasingly self-evident. In fact, this appellant recognizes this fact as applicable to itself when it says:

> "Only through collective action have workers ever improved wage and working conditions, but it is particularly true today that the worker, whether in industries or the government service, who is not a member of his group organization is merely an unheard voice crying in the wilderness." (R. 39)

More and more courts are recognizing that membership in a trade union is no longer comparable to membership in a London gentlemen's club.

> *James* v. *Marinship Corporation,* California Supreme Court, December, 1944;
> *Steele* v. *L. & N. R. R. Co.,* 323 U. S.

It is conceded that labor unions may set reasonable standards of qualifications for admissions, such as skill, but it has never been shown that race, creed or color may be considered a reasonable basis of eligibility. This Court in many cases has condemned irrelevant distinctions on the basis of race or nationality where fundamental rights are involved (*Hirabayashi* v. *U. S.*, 320 U. S. 81 at p. 100). Thus racial discrimination has been prohibited as a basis for determining qualifications for engaging in business (*Yick Wo* v. *Hopkins,* 118 U. S. 356), or for the exercise of the right to vote (*Smith* v. *Allwright,* 321 U. S. 649), or for residence purposes (*Buchanan* v. *Warley,* 245 U. S. 60).

Under the rationale of these cases it is clear that race, color or creed cannot be considered a reasonable basis for admission to trade unions.

A statute, therefore, which effectively and indirectly insures negroes the right to work by prohibiting unions from discriminating in membership standards based on race, color or creed, clearly is a reasonable and proper exercise of the state's police powers.

Conclusion

It is submitted that the appellant is a labor organization seeking, as one of its major objects, the protection and improvement of the employment status of its members; that it is within the police power of the state to forbid racial discrimination by such organizations because such organizations are so closely related to the vital civil right of pursuing a trade or profession; and that Congress has left the states free to apply such laws to mail service employees.

Respectfully submitted,

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